



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Meridian Corporation--Claim for Bid Protest
Costs

File: B-228468.3

Date: August 22, 1989

DIGEST

1. Attorneys' fees claimed by prevailing protester are determined reasonable, and thus are allowable, where the hourly rates are within bounds of rates charged by similarly situated attorneys, and the hours claimed are properly documented and do not appear to be excessive.
2. Request for payment of costs of pursuing claim is denied since such costs are not reimbursable.

DECISION

Meridian Corporation requests that the General Accounting Office (GAO) determine the amount it is entitled to recover from the New Cumberland Army Depot for filing and pursuing its prior protest. We determine that Meridian is entitled to recover total costs of \$15,614.87.

In Meridian Corp., 67 Comp. Gen. 223 (1988), 88-1 CPD ¶ 105, we sustained Meridian's protest against the agency's award of a contract for energy awareness seminars. We found that the agency had not presented any rational explanation to justify its award decision given the protester's technical superiority and the weight that the solicitation gave to technical factors.

Although our original decision recommended that the agency hold further negotiations with all offerors, the agency subsequently informed us that it had decided to cancel the solicitation and reissue it at a later date, with new evaluation factors giving increased weight to cost. We therefore held that the protester, which had been induced to compete on the basis that technical factors were to be given paramount importance, was entitled to recover its costs of filing and pursuing the protest and proposal preparation costs. Meridian Corp.--Award of Costs, B-228468.2, June 14, 1988, 88-1 CPD ¶ 566.

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The protester seeks a total of \$19,231.67, including \$18,711.25 in attorneys fees--\$17,383.75 incurred during the protest, \$1,327.50 in fees incurred in pursuing this claim and \$520.42 in out-of-pocket attorneys' expenses. The protester has waived its entitlement to proposal preparation costs. Because the protester has been unable to reach an agreement with the agency, Meridian has requested that we determine the amount of entitlement pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1988).

The agency asserts that the original protest issues were limited and that the amount claimed appears exorbitant. The agency believes that the protest should have required no more than 30 hours of attorney time for resolution, and has offered the protester \$5,500 in settlement, an amount that the agency believes to be reasonable.

A protester seeking to recover its bid or proposal preparation costs or the cost of pursuing its protest must submit sufficient evidence to support its monetary claim. Malco Plastics, B-219886.3, Aug. 18, 1986, 86-2 CPD ¶ 193. The amount claimed may be recovered to the extent that the claim is adequately documented and is shown to be reasonable; a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the pursuit of its protest. Patio Pools of Sierra Vista, Inc.--Claim for Costs, B-228187.4 et al., Apr. 12, 1989, 68 Comp. Gen. ___, 89-1 CPD ¶ 374.

We have reviewed the documentation submitted by the protester, which consists of copies of bills from its attorneys, including 16 pages of detail that list by date the services performed, the attorney involved and the hours billed to the protester. The protester's attorney has certified that the hours billed reflect actual hours worked and that the fees charged reflect the attorneys' customary hourly rates. We find this evidence sufficient to support Meridian's claim.

We note that the hourly rates billed to Meridian appear to be within the bounds of those normally charged by attorneys in the Washington, D.C., area for similar services; the agency does not question the reasonableness of the hourly rates. It is not questioned that the protester paid the amounts claimed. In such cases, we generally accept the attorneys' number of hours claimed unless specific hours deemed to be excessive can be identified and a rationale for

their rejection is articulated. Princeton Gamma-Tech, Inc.--Claim for Costs, B-228502.5, Apr. 24, 1989, 68 Comp. Gen. ___, 89-1 CPD ¶ 401. Apart from the agency's unsupported assertions, we have no basis for finding that the costs expended in pursuit of Meridian's protest exceed those that would be incurred by a prudent person in the pursuit of his protest. Id.

We have reviewed the attorneys' bills for work done in pursuit of Meridian's protest. We have discussed with the protester's attorney those costs that do not appear related to protest work, and the attorney has acknowledged that most of the charges that we have questioned are not protest-related, but were incurred after the protester had filed all of its comments and made all of its submissions relating to its protest. Accordingly, we have disallowed all costs incurred after December 1, 1987, the date upon which the protest record closed, except for 0.75 hours billed by the senior associate for advising his client of the status of the protest. We have also disallowed 2.5 hours worked by the senior associate in November, as the billings submitted show that he expended this time on matters other than the protest.

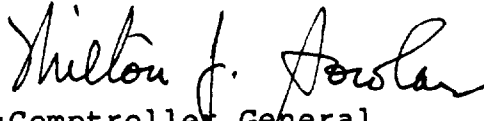
We determine however that the protester is entitled to recover legal fees incurred during the pendency of the protest in the following amounts: partner, 24.5 hours at \$155, \$3,797.50; senior associate, 48 hours at \$130, \$6,240; junior associate, 54.5 hours at \$85, \$4,632; librarian, 0.5 hour at \$60, \$30; legal assistant, 6.5 hours at \$55 and 6.0 hours at \$65 (the legal assistant's rate changed during the time period involved), \$747.50, for a total of \$15,447.50.

Regarding the \$1,327.50 in attorneys' fees incurred for the purpose of resolving Meridian's claim, we have previously found that such costs are not reimbursable, absent a statute or contract provision authorizing their recovery. Hydro Research Science, Inc.--Claim for Costs, B-228501.3, June 19, 1989, 68 Comp. Gen. ___, 89-1 CPD ¶ 572. Accordingly, we disallow this portion of the protester's claim in its entirety.

We have reviewed the protester's claim for \$520.42 in out-of-pocket expense, in support of which the protester has submitted its attorneys' bills that document these expenses. Initially, we note that the bills show expenses totalling only \$510.38; we also disallow all expenses incurred after the record closed on December 1. Of the \$247.69 in exp incurred in October and November 1987, we find \$167.37

expenses are clearly related to the protest and therefore allowable.

In sum, we determine that the protester is entitled to recover \$15,447.50 in attorneys' fees and \$167.37 in out-of-pocket costs, for a total of \$15,614.87.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States